IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.1435 OF 2002

Tata Motors Ltd., formerly known as
Tata Engineering & Locomotive
Company Ltd., a Company originally
registered under the Indian
Companies Act, 1913 having its
Registered Office at Bombay House,
24 Homi Mody Street, Fort,
Mumbai--400 001. : Petitioners

V/s.

1. The Talathi of Village Chikhali,
   Taluka Haveli, District Pune.

2. The Tehsildar,
   Taluka Haveli, District Pune.

3. The Sub-Divisional Officer,
   Pune Sub-Division, Pune.

4. The Collector of Pune,
   District Pune.

5. The State of Maharashtra.

6. Pimpri Chinchwad New Town
   Development Authority,
   having its office at Nigdi,
   Pune--411 044. : Respondents

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Mr.V.V.Tulzapurkar with Mr.P.S.Dani, Mr.H.N.Vakil and Mr.D.D.Mehta i/b. M/s.Mulla & Mulla & Craigie Blunt & Caroe for the petitioners.

Mr.C.R.Sonawane, Assistant Government Pleader for respondent nos.2 to 5.

Mr.C.J.Sawant with Mr.Vijay D. Patil for respondent no.6.

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CORAM : S.B.MHASE & R.S.MOHITE,JJ.

Date of Reserving) : 28.6.2007
the Judgement)

Date of Pronouncing): 4/7/2007

JUDGEMENT (Per R.S.Mohite,J.)

1. By this petition, the petitioners, Tata Motors Limited, seek a writ to quash and set aside demand notices dated 26.2.2002, 1.3.2002 and 5.3.2002 at exhibits ‘C’,‘E’ and ‘F’ to the petition issued by the Talathi, village Chikali, Taluka Haveli, Dist. Pune. By the said notices, the petitioners have been called upon to pay an amount of Rs.45,25,536/- being the N.A. assessment for the period 1995 till the year 2002 as per the details given in the impugned notices.

2. The petitioners’ case is that under a lease deed dated 3.1.1995 executed by the Chief Executive Officer of Pimpri Chinchwad New Town Development Authority, they were leased 164.5 acres of land in sector nos.15 and 15A of village Chikali, taluka Haveli, Dist. Pune. By further lease deed dated 1.3.1995 also executed by the Chief Executive Officer on behalf of Pimpri Chinchwad New Town Development Authority, they were leased a further area of 23.5 acres in sector no.15 of village Chikali, taluka Haveli, Dist. Pune.

3. On these two plots admeasuring 188 acres, the petitioners started a car manufacturing unit known as "Telco Car Plant". They started construction of the plant

in the year 1997 and after completion of the construction commenced actual industrial use of the said land in the year 1999.

4. The petitioners received show cause notice dated 29.3.2001 from the Sub-Divisional Officer, Pune, calling upon them to show cause as to why the area allotted to the petitioners from the year 1995 in sectors 15 and 15A, which were being used for industrial purpose, should not be assessed for non-agricultural purpose. They replied to this show cause notice by their reply dated 19.5.2001. In the reply, they contended that the land in question allotted to them had been allotted after Notification under section 37 of the Maharashtra Regional and Town Planning Act, 1966 issued by the Government of Maharashtra, changing the user from residential to industrial. This Notification was perused by us and it has been issued in the year 1994 i.e. prior to the lease of the plots to the petitioners.

5. That after the submission of the reply, no communication was received from the Sub-Divisional Officer, but the petitioners received the three impugned demand notices from the Talathi of village Chikali.

6. In brief, it is the petitioners' case that they are not liable to pay non-agricultural assessment as they were

Government lessees or, in any case, were tenants of Pimpri Chinchwad New Town Development Authority and they were exempted under the Maharashtra Land Revenue Code from payment of non-agricultural assessment. It was their case that they were paying rent as per two lease deeds to the Pimpri Chinchwad New Town Development Authority and the payment of rent was the only liability which could be fastened to them. That non-agricultural assessment could only be fastened and made payable to an occupant of the land. That the term "occupant" is defined in section 2(23) of the Maharashtra Land Revenue Code, 1966 which reads as under:-

> "2.(23) "occupant" means a holder in actual possession of unalienated land, other than a tenant or Government lessee; provided that, where a holder in actual possession is a tenant, the land holder or the superior landlord, as the case may be, shall be deemed to be the occupant".

It was further contended that the liability to pay assessment as land revenue was contemplated by section 39 of the Maharashtra Land Revenue Code and the said section reads as under:-

> "39. Every occupant shall pay as land revenue the assessment fixed under the provisions of this Code and rules made thereunder; and every Government lessee shall pay as land revenue lease money fixed under the terms of the lease."

7. On behalf of Pimpri Chinchwad New Town Development

Authority, it was contended that even assuming that they were occupants by virtue of the deeming provision contained in the definition of the term "occupant", yet under the statutory Regulations called "Pimpri-Chinchwad New Town Development Authority (Disposal of Lands) Regulations, 1973, all rates, taxes, fees and other charges due and becoming due in respect of the demised land payable by the Development Authority or lessees were payable by the lessees. On perusing the said Regulations, we find that these are statutory regulations issued in exercise of powers conferred by section 159 of the Maharashtra Regional and Town Planning Act, 1966. Clause 10(iv) of the Regulations is in the following terms:-

> "10.(iv) To pay all rates, taxes-The lessee shall during the continuance of the lease pay all the rates, taxes, fees and other charges due and becoming due in respect of the demised land by the Development Authority or lessee thereof."

8. It is clear from these Regulations that even assuming that it was Pimpri-Chinchwad New Town Development Authority which was the occupant, by virtue of the deeming provisions in the definition of the word "occupant" under section 2(23) of the Maharashtra Land Revenue Code, the ultimate liability by operation of the aforesaid provision of the Disposal of Lands Regulation,

1973 would be upon the lessee. This would be the legal position, notwithstanding the fact that there was no express provision in the lease deed pertaining to payment of such rates, taxes and charges payable by the Pimpri-Chinchwad New Town Development Authority. The counsel appearing for the said authority also brought to our attention regulation 16 of the Disposal of Lands Regulation, 1973, which provides that in the event of conflict between these Regulations and the provision of a lease-deed entered into by the Development Authority, the Regulation shall prevail.

9. The counsel appearing for the petitioners sought to argue that Pimpri-Chinchwad New Town Development Authority (Disposal of Lands) Regulations, 1973 would not apply to lands leased out to the petitioners. It was their contention that under regulation 1(ii), it was expressly provided that the regulation would apply to the lands acquired by the or vested in the Pimpri-Chinchwad New Town Development Authority for the development of the Pimpri- Chinchwad New Town. It was contended that as the lands were not acquired by or vested in the Pimpri-Chinchwad New Town Development Authority, the regulation would not apply and the liability will be strictly in accordance with what is provided in the Maharashta Land Revenue Code, 1966. We do not agree with this proposition. The word "acquired" or "vested" as

mentioned in the Regulation, in our view, appears to be words used in a broad sense and do not necessarily mean acquisition of title or vesting of title. These words are not defined under the Town Planning Act. The dictionary meaning of the word "acquire" as occurring in the Concise Oxford Dictionary is as follows:-

> "acquire. 1 gain by and for oneself; obtain. 2 come into possession of .....".

The word "vest" in the dictionary, inter alia, has been defined as "confer (property or power) on a person with an immediate or future possession".

10. In Black's Law Dictionary, Sixth Edition, the word "acquire" is defined as follows:-

> "Acquire. To gain by any means, usually by one's own exertions; to get as one's own; ..... Sometimes used in the sense of "procure". It does not necessarily mean that title has passed. Includes taking by devise".

The word "vest" is defined as under:-

> "Vest. To give an immediate, fixed right of present or future enjoyment".

11. Thus, it is clear that the words "acquire" and "vest" can have a wider connotation. The terms may have a

variety of meaning. In the present context, we feel that when the Pimpri-Chinchwad New Town Development Authority was actually given possession of the lands in question with statutory power under section 114 of the Town Planning Act to dispose of and deal with the same, they can be said to have acquired the said land even though, strictly speaking, legal title may not have been passed on to them.

12. In this view of the matter, we feel that the contention of the petitioners that they are not liable to pay N.A. assessment does not seem to have any substance.

13. The counsel appearing for Pimpri-Chinchwad New Town Development Authority brought to our notice the judgement of the Apex Court in Nagpur Improvement Trust v. Nagpur Timber Merchants' Association (1998 (1) Bom.C.R. 788) in which the Supreme Court took a similar view which we have taken hereinabove. In that case, the Nagpur Improvement Trust has granted lease to Nagpur Timber Merchants' Association. The State Government demanded non-agricultural assessment charges from the Nagpur Improvement Trust. In terms, the Improvement Trust asked the lessee to make payment of non-agricultural assessment charges in respect of their land. The lessee, it was claimed, was liable for non-agricultural assessment. The levy of such assessment was challenged in the High Court.

The High Court held that it was the Improvement Trust which alone was liable to pay the assessment charges. The Apex Court held that this view was taken by the High Court in view of the interpretation of rule 9 which provided for payment of assessment by the Nagpur Improvement Trust and no one else. The Apex Court observed that the possibility could not be excluded that the amount of non-agricultural assessment payable in respect of the plot of land disposed of by the Improvement Trust may, in the course of time, exceed the amount of the premium that is paid by the lessee at the time of grant of lease and, if the Improvement Trust is precluded from recovering the amount of non-agricultural assessment from the lessee, it may end up paying more by way of non-agricultural assessment than the amount received by it as premium of the land. Reference was made to rule 11 of the Land Disposal Rules, 1983 wherein it was expressly stated that the lessee during the continuance of the lease shall pay land revenue, non-agricultural assessment and cesses assessed or which may be assessed on the demised land. The fact situation before the Supreme Court was almost identical to the fact situation of this case. We have no hesitation in holding that the issue in this case is covered by the judgement of the Apex Court in the cited case.

14. The question still remains is as to from what point

of time the petitioners are liable to pay assessment. Our attention was drawn to section 115 of the Maharashtra Land Revenue Code which pertains to the date of commencement of non-agricultural assessment and provides that it shall be levied with effect from the date on which any land is actually used for a non-agricultural purpose. In the present case, we find that right from the very inception, the petitioners have contended that they have commenced actual non-agricultural use in the year 1999 when the construction of the premises was completed. This is not controverted in any of the demand notices or in this petition. In the circumstances, we feel that the petitioners will be liable to pay non-agricultural assessment from the year 1999-2000 onwards and will not be liable to pay the assessment prior thereto. The first demand notice dated 26.2.2002 was rightly issued, but only part of the demand, being item nos.5, 6 and 7 for the period 1999-2000 to 2000-2001 were actually payable, since the actual use of the premises commenced in the year 1999.

15. In view of the aforesaid observations, the petition must partly succeed. By a writ of certiorari, the impugned notices are quashed, insofar as they raise the demand for the period 1995 to 1998-1999. The petitioners will be liable to pay non-agricultural assessment from the year 1999-2000 onwards. It is expressly clarified

that they will not be liable to pay non-agricultural assessment for the year 1995-1996 to years 1998-1999.

16. The rule is partly made absolute accordingly and the petition is disposed of with no order as to costs.

Sd/-

S.B. MHASE, J.

Sd/-

R.S. MOHITE, J.

On pronouncement of the judgment, Mr.Dani, the learned counsel for the petitioners requested for continuation of the interim order. However, this Court is not inclined to extend the interim order in view of the fact that the claim involved is a monetary claim. Prayer for continuation of interim order is, accordingly, rejected.

Sd/- Sd/-

(R.S.MOHITE J) (S.B. Mhase, J.)